



**CITY OF LODI  
COUNCIL COMMUNICATION**

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**AGENDA TITLE:** Approve Fee Contract with Scott & Nichols for Representation of Officer Neis and former Officer Foster in *Peter Rose et al. v. the City of Lodi, et al.*; United States District Court, Eastern District of California, Case No.CIV.S-05-02229

**MEETING DATE:** December 7, 2005 City Council Meeting

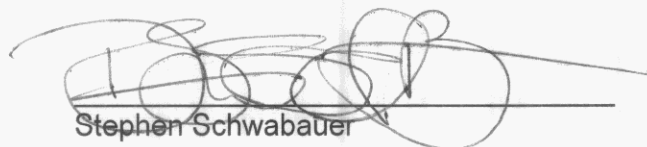
**PREPARED BY:** City Attorney's Office

**RECOMMENDED ACTION:** Approve Contract for Outside Counsel to represent Officer Neis and Former Officer Foster.

**BACKGROUND INFORMATION:** As you know, subject to certain conditions, public employees (both current and former) are entitled to indemnity for their actions taken in the course and scope of their duties under State Law. (Government Code Section 995 et seq.) In addition, where an actual conflict of interest exists between the employee and the entity, the entity must provide a separate attorney to represent the employee. A mere potential conflict of interest does not require outside counsel. However in this case outside counsel is advisable because of the nature of the allegations present significant conflicts for the City Attorney's Office to manage in representing the officers and the City when our primary obligation is to protect the interests of the City.

As you also know, the City is insured through CJPRMA with a \$500,000 Self Insured Retention (SIR). Since legal expenses are counted toward the SIR, they will not exceed \$500,000 to the City over the life of the action.

**FISCAL IMPACT:** Unknown at this time, but capped at \$500,000 out of liability reserve account.

  
Stephen Schwabauer  
City Attorney

APPROVED:   
Blair King, City Manager

**AGREEMENT TO ENGAGE OUTSIDE LEGAL COUNSEL  
BETWEEN THE CITY OF LODI AND  
SCOTT & NICHOLS, A PROFESSIONAL CORPORATION**

THIS AGREEMENT TO ENGAGE OUTSIDE COUNSEL (The "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Lodi (referred to as "City") and Scott & Nichols, A Professional Law Corporation (referred to as "Scott & Nichols").

The City and Scott & Nichols agree as follows:

**1. SCOPE OF REPRESENTATION**

Scott & Nichols agree to represent the City of Lodi in connection with the pending case of \_\_\_\_\_ v. City of Lodi, et al.

Scott & Nichols will act in accordance with the City's instructions. Representation will include, among other things, handling the referenced litigations and proceedings, preparing appropriate court filings, making required appearances on behalf of the City, participating in mediation sessions and providing such other assistance as may be appropriate or as the City may request.

**2. CHARGES FOR ATTORNEY SERVICES**

For services performed by Scott & Nichols, the City agrees to pay, and Scott & Nichols agrees to accept, compensation for time expended by attorneys at the rate of \$175.00 per-house. hour

**3. INITIAL ASSESSMENT**

At the outset of the engagement, Scott & Nichols will undertake an initial evaluation of the litigation and provide the City with an analysis of the case, including, but not limited to, an evaluation of liability, damages, and other critical issues. Additionally, Scott & Nichols will provide a proposed budget for the undertaking reasonably anticipated expenses for professional fees and costs.

**4. COMMUNICATIONS**

The City has designated City Attorney Stephen Schwabauer as its primary point of contact for purposes of this Agreement. W. Stephen Scott of Scott & Nichols will serve as the primary point of contact with Scott & Nichols.

## **5. BILLING FORMAT AND FREQUENCY**

Scott & Nichols will bill the City monthly for services rendered at the agreed rate. The monthly statements will include any costs Scott & Nichols incurs on the City's behalf, such as photocopying, postage, long distance telephone, courier services and computerized legal services for legal research or document management. Said charges will be consistent with the City's billings guidelines adopted February 23, 2004.

## **6. RETENTION OF EXPERT WITNESSES AND LITIGATION CONSULTANTS; DIRECT PAYMENT OF MAJOR EXPENSES**

Upon prior approval of the City, Scott & Nichols may enter into agreements with other parties for purposes of providing expert witness services or litigation support and consulting services for matters covered by this Agreement. The City agrees to provide compensation directly to such parties. Examples of such services may include photocopying of documents in excess of \$250, document management services, preparation of trial graphics and presentation aids, mock trial consulting services and court reporter fees and videographer fees for depositions.

## **7. NOTICES**

Any notice to a party to this Agreement must be in writing and addressed to the party at the address set forth below or at such other addresses about which the parties may notify each other from time to time.

### **TO THE CITY:**

City of Lodi  
D. Stephen Schwabauer  
City Attorney  
221 W. Pine Street  
Lodi, CA 95240

### **TO SCOTT & NICHOLS:**

W. Stephen Scott  
Scott & Nichols  
120 N. Hunter Street  
Stockton, CA 95202

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with applicable laws, but the remainder of this Agreement shall be in full force and effect.

No provision of this Agreement shall be construed for or against any party on the basis of its contribution or lack of contribution, to the drafting of such provision, and the provisions of Section 1654 of the California Civil Code shall have no application to this Agreement. The failure of any party to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision and shall not prevent that party from thereafter enforcing such or any other provision of this Agreement.

## 8. INTEGRATION

This Agreement represents the entire understanding of the City and Scott & Nichols as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

### CITY OF LODI

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### SCOTT & NICHOLS Professional Law Corporation


W. Stephen Scott  
Signature

W. Stephen Scott  
Printed Name

Partner - Attorney  
Title

12/1/05  
Date

### APPROVED AS TO FORM:

\_\_\_\_\_  
D. Stephen Schwabauer  
City Attorney 

### ATTEST:

\_\_\_\_\_  
Susan J. Blackston  
City Clerk